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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

JEREMY OLSEN,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 2:20-cv-374 (SMJ)
ALEX M. AZAR II, in his official)	
capacity as Secretary of Health and)	November 30, 2020
Human Services,)	Without Oral Argument
)	
Defendant.)	
)	

CONSENT MOTION FOR EXTENSION OF TIME

On October 9, Judge Walton of the district court for the District of Columbia ordered this case transferred pursuant to 28 U.S.C. § 1406(a). In the same order, Judge Walton denied “as moot without prejudice” the Secretary’s motion to dismiss two claims under Federal Rule of Civil Procedure 12(b)(6). ECF No. 14 at 2. The transfer was effected on October 14. ECF Nos. 15 & 16.

Although this case was transferred fourteen days ago, Federal Rule of Civil Procedure 12(a)(4)(A) provides that when a court denies a motion to dismiss “the

1 responsive pleading must be served within 14 days after notice of the court's
2 action." *Id.* (emphasis added). The Secretary therefore believes that his time to
3 respond to the complaint ran from the court's October 9 order denying his Rule
4 12(6)(6) motion "as moot without prejudice," and not from the transfer of the case.
5 The Secretary is filing a renewed Rule 12(b)(6) motion today, and notes that the
6 denial of the earlier motion may have been in error, as the motion was not mooted
7 by the transfer of this case. The Secretary respectfully requests a *nunc pro tunc*
8 extension of his time to respond to the complaint in this case, and that the Court
9 deem today's renewed motion to dismiss to be timely filed. The Secretary regrets
10 his apparent error, and Plaintiff consents to this relief.

Respectfully submitted,

JEFFREY BOSSERT CLARK
Assistant Attorney General

MICHELLE BENNETT
Assistant Director, Federal Programs Branch

/s/ James Bickford
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Date: October 28, 2020

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